## TABLE OF CONTENTS


| | Page |
|---|---|
| PROCEEDINGS BELOW | 2 |
| A. PROCEEDINGS IN THE DISTRICT COURT | 2 |
| B. PROCEEDINGS IN THE COURT OF APPEALS | 2 |
| C. SUBSEQUENT PROCEEDINGS | 3 |
| REASONS FOR DENYING THE WRIT | 3 |
| CONCLUSION | 10 |


## INDEX OF CITATIONS


| CASES: | Page |
|---|---|
| *Amstar Corp. v. Amalgamated Meat Cutters & B. Workmen*, 468 F.2d 1372 (5th Cir. 1972) | 5, 6, 7, 8 |
| *Boys Market v. Retail Clerks*, 398 U.S. 235 (1970) | 2, 3, 4, 6, 9 |
| *Gateway Coal Co. v. Mine Workers*, 414 U.S. 368 (1974) | 9 |
| *Monongahela Power Co. v. Local 2332, International Brotherhood of Electrical Workers AFL-CIO-CLC*, 484 F.2d 1209 (4th Cir. 1973) | 8 |
| *NAPA Pittsburgh, Inc. v. Automotive Chauffeurs, Parts and Garage Employees, Local Union 926*, Civ. No. 73-764 (3rd Cir., filed August 8, 1974) | 5 |
| *Parade Publications, Inc. v. Philadelphia Mailers Union No. 14*, 459 F.2d 369 (3rd Cir. 1972) | 5 |
| STATUTES: | |
| 29 U.S.C. Section 185 | 2, 9 |

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1974

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No. 74-48

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LOCAL 391, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, ET AL., *Petitioners*

v.

PILOT FREIGHT CARRIERS, INC., *Respondent*

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## RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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Respondent, Pilot Freight Carriers, Inc., respectfully prays that petitioners' "Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit" be denied.

## PROCEEDINGS BELOW[1]

### A. Proceedings in the District Court

Pilot instituted this action against Local 391 and International for injunctive relief to terminate a work stoppage at its terminal and for damages for breach of contract under Section 301 L.M.R.A. (29 U.S.C. Section 185). The District Court concluded that it had jurisdiction pursuant to 29 U.S.C. Section 185, and held that "the dispute or controversy between the parties involving the refusal of those Pilot employees who are members of Local 391 to cross a picket line at Pilot's terminals is a matter subject to the mandatory grievance procedures of the parties' contract, and thus this Court has authority under *Boys Markets* to issue an injunction." The District Court issued a preliminary injunction "pending . . . a valid and proper exhaustion of contractual remedies."

### B. Proceedings in the Court of Appeals

The petitioners appealed and sought, and obtained, a stay of the injunction pending appeal. On May 3, 1974, the Fourth Circuit reinstated the preliminary injunction insofar as it applied to International and Local 391. The Court of Appeals reasoned that:

> "The National Master Freight Agreement in the present case does have a mandatory grievance procedure (Article 8) regarding any dispute under the contract. The relationship between the no-strike clause and the clause allowing individual employees to refuse crossing a primary picket line was, we think, an arbitrable matter, as is Pilot's contention

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[1] Unless otherwise stated, page references are to the Appendix of *petitioners'* petition.

that the underlying dispute, whether the local union or national union had directed or influenced concerted activity not to cross the picket line, as opposed to individual employees' decisions not to cross it. On the merits, the arbitration must decide whether Article 9, whatever its scope is found to be, had been complied with or whether the union is using Article 9 as a subterfuge to strike in violation of the argeement. We think the parties intended to submit disputes of this nature to arbitration, and, in any event, we must construe the agreement liberally in favor of arbitration. *United Steelworkers of America v. Warrior and Gulf Navigation Co.*, 363 U.S. 564 (1960)." (p. 29 a.)

### C. Subsequent Proceedings

This Court denied the Application of International and Local 391 "For Stay of Mandate of United States Court of Appeals for the Fourth Circuit."

The District Court, in a Memorandum Order dated May 30, 1974, concluded that by virtue of proceedings subsequent to the entry of the order of the Court of Appeals of May 3, 1974, "the mandatory grievance machinery of the various contracts (had) been exhausted" and dissolved the preliminary injunction.

## REASONS FOR DENYING THE PETITION

The decision of the Fourth Circuit in this case does not erroneously construe *Boys Markets v. Retail Clerks*, 398 U.S. 235. Furthermore, it is not in direct conflict with decisions of the Third and Fifth Circuits as contended by petitioners. As discussed below, the Third Circuit has in fact recently expressed its approval of the decision of the Fourth Circuit in this case. Peti-

tioners have failed to set forth "special and important reasons" why this Court should review the decision of the Fourth Circuit in this case on writ of certiorari. The petition should be denied.

All of the prerequisites for the issuance of a *Boys Markets* injunction were found to exist in this case. (Decision of District Court, p. 9a; Decision of Fourth Circuit, p. 29a). The Court below easily found that in light of the broad mandatory grievance procedure covering "[a]ll grievances or questions of interpretation" and the express no-strike clause prohibiting all strikes, that the work stoppage herein was over matters that both parties were contractually bound to arbitrate. The Court of Appeals succinctly stated:

> "The National Master Freight Agreement in the present case does have a mandatory grievance procedure (Article 8) regarding any dispute under the contract. The relationship between the no-strike clause and the clause allowing individual employees to refuse crossing a primary picket line (Article 9) was, we think, an arbitrable matter, as is Pilot's contention that the underlying dispute, whether the local union or national union had directed or influenced concerted activity not to cross the picket line, as opposed to individual employees' decisions not to cross it. On the merits, the arbitration must decide whether Article 9, whatever its scope is found to be, had been complied with or whether the union is using Article 9 as a subterfuge to strike in violation of the agreement. We think the parties intended to submit disputes of this nature to arbitration, and, in any event, we must construe the agreement liberally in favor of arbitration. *United Steelworkers of America v. Warrior and Gulf Navi-*

*gation Co.*, 365 U.S. 564 (1960). (p. 29a, see also the decision of the District Court, p. 9a)."

Petitioners erroneously contend the decision of the Fourth Circuit is in direct conflict with the decision of the Third Circuit in *Parade Publications, Inc. v. Philadelphia Mailer U. No. 14,* 459 F.2d 369 (3rd Cir. 1972) (hereinafter "*Parade*") and the decision of the Fifth Circuit in *Amstar Corp. v. Amalgamated Meat Cutters and B. Workmen,* 468 F.2d 1372 (5th Cir. 1972) (hereinafter "*Amstar*").

The case *sub judice* does not conflict with *Parade.* In *Parade* the employer did not affirmatively allege that an arbitrable issue was involved in the work stoppage. *Parade* merely held that a district court has no jurisdiction to issue a *Boys Markets* injunction if it does not first determine that the grievance in question is arbitrable under an existing collective bargaining agreement. The district court in *Parade* failed to determine what caused the strike and whether any arbitrable issues existed. The Court of Appeals remanded the case to the district court to hear evidence and determine these issues. In the case *sub judice* it has been firmly established that underlying arbitrable issues do exist.

In reality, the Third Circuit follows the Fourth Circuit, as evidenced by *NAPA Pittsburgh, Inc. v. Automotive Chauffeurs, Parts and Garage Employees, Local Union 926,* Civ. No. 73-764 (3rd Cir. filed August 8, 1974), (hereinafter "*NAPA*"). In *NAPA,* Teamsters Local 110 (Local 110) called a strike at NAPA Altoona, Inc.'s, Altoona facility and began picketing. Subsequently picket lines were established at NAPA Pittsburgh, Inc.'s facility in Pittsburgh. Relying on a provision in the collective bargaining agreement per-

mitting employees to refuse to cross "primary" picket lines at NAPA Pittsburgh, Inc.'s place of business, Automobile Local 926, (Local 926), the bargaining agent for the employees of NAPA Pittsburgh, Inc., informed its members that notwithstanding the express no-strike clause and broad mandatory grievance procedures of the collective bargaining agreement, they could refuse to cross Local 110's picket line at the Pittsburgh plant. A work stoppage ensued and NAPA Pittsburgh sought injunctive relief on the ground that a question existed as to whether the picket line was "primary" within the meaning of the collective bargaining agreement, and contended the issue was subject to the mandatory arbitration provisions of the collective bargaining agreement. The Court of Appeals held that a *Boys Market* injunction was proper pending arbitration of the question whether the picket line was "primary":

> "We hold that determination of whether the picket line should be classified as primary or secondary was arbitrable under the terms of the contract and pending resolution of the question Local 926 was properly enjoined from causing a work cessation. Requiring arbitration does not nullify the union's right to honor a primary picket line, but only suspends the exercise of the right until its existence is established by an arbitrator's decision. Undue delay should not be permitted since the district court has ample authority in the exercise of its equitable powers to see to it that arbitration proceeds promptly and expeditiously." (P. 6, Appendix, Supplement to Petition.)

The Fifth Circuit's decision in *Amstar* is not directly in conflict with the decision of the Fourth Circuit in this case. In *Amstar*, unlike this case and *NAPA, supra*, the

contract contained no clause relative to the right of employees to honor picket lines of other labor organizations. In this case, as in *NAPA*, the contract expressly provided that employees could honor only "primary" picket lines. Consequently, the only arbitrable issue found to exist in *Amstar* between the employer and the Meat Cutters Union was the scope of the no-strike clause, or more particularly, the validity under the Meat Cutters' no-strike obligation of the member-employees at the Chalmette refinery honoring the picket lines of striking independent unions from other cities (local unions affiliated with the International Longshoremen's Association). Unlike this case and *NAPA*, no one in *Amstar* contended that the establishment of the picket line immediately raised a dispute, and thus an arbitrable issue, as to whether the picket line was primary (and could be honored) or secondary (and could not be honored). Even under the restrictive *Amstar* view, the work stoppage in this case is "over" an underlying arbitrable dispute. As soon as the picket lines were established at Pilot's Kernersville terminal (and before the work stoppage fully developed) a dispute arose between the parties as to whether or not the picket line was secondary or primary and whether the picket line was actually that of Local 512. This alone should distinguish this case from *Amstar*. The dispute in this case is highlighted by the fact that, unlike the picket line in *Amstar*, the roving picket lines at Pilot's terminals were not picket lines of independent unions but rather were established either by Local 512, an affiliate of International and a sister union of Local 391, or else by International itself, acting in concert with Local 391 and other locals.

The close affiliation between Local 512 and International and Local 391 raised a further arbitrable issue

not present in *Amstar* or *NAPA*.[1] In the words of the Fourth Circuit, that issue was "whether Article 9 had been complied with or whether the union is using Article 9 as a subterfuge to strike in violation of the agreement."

It is clear that the no-strike clause (Article 44) would prohibit International and Local 391 from calling a system-wide strike to force Pilot to recognize Local 512 as the bargaining agent for the Florida employe . It is equally clear that they should not be permitted to use alleged Article 9 rights as a subterfuge to strike in violation of Article 44 of the agreement. Pilot has contended that the underlying dispute arises out of the fact that the picket lines at its Kernersville terminal were not actually Local 512 picket lines but rather were International picket lines wholly supported and financed by the International, acting in concert with various locals, including Local 391. Pilot further contended that International, acting in concert with Local 391, has directly encouraged, assisted, financed, and ordered its members not to cross the picket lines it established. Consequently, Pilot has viewed this whole controversy as an attempt on the part of the union to mask the strike as being protected by the rights granted by Article 9 which presumably does permit individual employees to refuse to cross a "primary" picket line, but which would not allow the International, acting in concert with locals, to establish and finance the picket lines under the guise of being Local 512 picket lines and then encourage,

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[1] *Monongahela Power Co. v. Local No. 2332 Int. Bro. of Elec. Wkrs.*, 484 F.2d 1209 (4th Cir. 1973), also involved a close affiliation between the "picketing" union and the "honoring" union. There, the Fourth Circuit correctly held that a federal district court had jurisdiction to grant a *Boys Markets* injunction. *Monongahela*, like this case, involved a collective bargaining agreement which contract broad mandatory arbitration provisions and an express no-strike clause.

finance, or order its members to refuse to cross such picket lines. Surely a *Boys Market* injunction is proper to enjoin such a blatant disregard of the collective bargaining contract and the arbitral process. Instead of submitting the dispute to arbitration as requested by Pilot and as required by the collective bargaining agreement, the union informed its members that they could rely on their Article 9 rights and refuse to cross the picket lines. A work stoppage in violation of the no-strike clause ensued. Until the dispute was resolved by the arbitral process, the union had no right to strike. Pilot submits that in light of the presence of the express no-strike clause, there can be no real doubt that the district court had authority to enjoin the work stoppage under the principles enunciated in *Boys Markets, supra,* and *Gateway Coal Company v. Mine Workers,* 414 U.S. 368 (1974). Petitioners' restrictive reading of *Boys Markets* is not warranted. This Court in *Boys Markets* correctly noted the shift in congressional emphasis "from protection of the nascent labor movement to the encouragement of collective bargaining and to administrative techniques for peaceful resolution of industrial dispute" through the arbitral process, and concluded that Section 301 (a) of the Labor Management Relations Act, 29 U.S.C. section 185 (a) empowers a federal court to enjoin violations of a contractual duty not to strike. 398 U.S. at 251.

Pilot asks only that it get what it bargained for in the collective bargaining agreement. As expressed by Justice Brennan in *Boys Markets* and quoted by this Court in *Gateway Coal, supra:*

> "[A] no strike obligation, express or implied, is the quid pro quo for an undertaking by the employer to submit grievance disputes to the process of arbi-

tration. . . . Any incentive for employers to enter into such an agreement is necessarily dissipated if the principal and most expeditious method by which the no-strike obligation can be enforced is eliminated." 398 U.S. at 248. (Citation omitted.)

## CONCLUSION

For the foregoing reasons the Petition for Certiorari should be denied.

Respectfully submitted,

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